

REMARKS

The examiner is thanked for the performance of a thorough search.

In the specification, paragraphs [0007] and [0080] are amended.

In the claims, Claims 2, 5-7, 9, 11-15, 18-21, 24-29, 31-54, 57-59, 61, 63-67, 70-73, and 76-78 are amended, Claims 4, 30, and 56 are canceled, and no claims are added. Hence, Claims 1-3, 5-29, 31-55, and 57-78 are pending in the application.

The amendments to the claims as indicated herein do not add any new matter to this application. Furthermore, amendments made to the claims as indicated herein have been made to exclusively improve readability and clarity of the claims and not for the purpose of overcoming alleged prior art.

Each issue raised in the Office Action mailed April 20, 2007 is addressed hereinafter.

I. ISSUES NOT RELATING TO CITED ART

A. OBJECTIONS

Paragraphs [0007] and [0080] of the specification are free of informalities. Removal of the objection with respect to the specification is there respectfully requested.

Claims 2, 28, and 54 are free of informalities. Removal of the objection with respect to Claims 2, 28, and 54 is there respectfully requested.

B. CLAIMS 27-52

Claims 27-52 stand rejected under 35 U.S.C. § 101 for allegedly being directed to non-statutory subject matter. Claims 27-52 recite a “computer-readable storage medium.” The plain meaning of “a computer-readable storage medium carrying instructions” requires that the storage medium *store* the instructions so that they may be read by a computer. A signal is not a computer-readable storage medium because a signal is not a medium that is capable of storing

instructions that may be read by a computer. While it is true that a signal may *carry* instructions, those instructions carried by a signal are not *stored*. For example, volatile or non-volatile memories may store instructions, whereas a signal cannot. The Applicants acknowledge that the Office's current position is that signals are not patentable subject matter, and further point out that a computer-readable storage medium cannot possibly qualify as a signal.

Further, a computer-readable storage medium qualifies as an article of manufacture, which is expressly recognized as patentable subject matter under 35 U.S.C. § 101.

Consequently, it is respectfully submitted that each of Claims 27-52 is directed towards statutory subject matter, and the rejection made under 35 U.S.C. § 101 is respectfully requested to be withdrawn.

## II. ISSUES RELATING TO CITED ART

Claims 1-4, 7, 9-10, 12, 15-16, 19-30, 33, 35-36, 38, 41-42, 45-56, 59, 61-62, 64, and 71-78 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,675,382 issued to Foster ("*Foster*"). This rejection is respectfully traversed.

Claims 5-6, 8, 14, 18, 31-32, 34, 40, 44, 57-58, 60, 66, and 70 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Foster*, in view of "Architecture-Based Runtime Software Evolution," 1998, IEEE by Oreizy et al. ("*Oreizy*"). This rejection is respectfully traversed.

Claims 22, 23, 27, 37, 39, 43, 63, 65, and 69 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Foster*, in view of *Oreizy*, and further in view of U.S. Patent Publication No. 2004/0003266 to Moshir et al. ("*Moshir*"). This rejection is respectfully traversed.

A. CLAIM 1

Present Claim 1 recites:

A method of dynamic installation and activation of software packages in a node in a distributed network of nodes, the method comprising the computer-implemented steps of:  
storing, in a ~~software package storage of~~ **[Chris, should we delete all reference so the “software package storage” and just say we store software in the master node?]** a master node in the distributed network, a plurality of software packages and a plurality of software modules that the nodes in the distributed network will be using;  
wherein each software package of the plurality of software packages contains at least one module and associated dependency information;  
receiving a software update for a node on said master node;  
wherein the software update contains a set of one or more software packages;  
storing the software update on said software package storage;  
**wherein said master node notifies said node that a software update is being requested;**  
wherein said master node passes said node identities of one or more software packages to be updated and module dependencies;  
**wherein said node determines, using the module dependencies, running processes on said node that will be affected by the software update.**  
(emphasis added)

At least the above-bolded features of Claim 1 are not taught or suggest by *Foster*.

1. *Foster fails to teach or suggest that a node determines running processes on the node that will be affected by a software update*

The Office Action cites step 410 of FIG. 4 and col. 9, lines 23-25 of *Foster* for disclosing: “wherein said node determines, using the module dependencies, running processes on said node that will be affected by the software update” as recited in present Claim 1 (i.e., previous Claim 4). This is incorrect. The cited portion of *Foster* merely states: “At step 410, prior to installing package 200, any dependencies are checked as specified by the DEPENDENCIES field in control file 220.” According to col. 8, lines 22-24 of *Foster*, the DEPENDENCIES field in control file 120 identifies other packages or files that are dependent on the package or the content of the package that is being operated on. After checking the DEPENDENCIES field, *Foster* teaches that “if the dependent files or packages required for the

Seq. No. 8499

proper operation of package 200 are not present on the system, then an error is thrown” (col. 9, lines 26-28).

In contrast, Claim 1 recites that a node uses module dependencies to determine which running processes on the node will be affected by the software update, as opposed to simply checking dependencies. Thus, although *Foster* states that dependencies of a software package are checked, *Foster* lacks any teaching or suggestion of that the recited determination is performed, i.e., determining which running processes on the node will be affected by a software update.

2. *Foster fails to teach or suggest “wherein said master node notifies said node that a software update is being requested”*

The Office Action cites col. 6, lines 8-19 of *Foster* for disclosing “wherein said master node notifies said node that a software update is being requested” as recited in Claim 1.

However, the cited portion of *Foster* states:

Computer 100 can send messages and receive data, including program code, through the network(s), network link 121, and communication interface 120. In the Internet example, remote server computer 126 might transmit a requested code for an application program through Internet 125, ISP 124, local network 122 and communication interface 120.

The received code may be executed by processor 113 as it is received, and/or stored in mass storage 112, or other non-volatile storage for later execution. In this manner, computer 100 may obtain application code in the form of a carrier wave.

The Office Action equates the remote server computer (RSC) 126 of *Foster* with the master node of Claim 1 (page 4). The cited portion of *Foster* teaches that computer 100 is capable of sending messages and receiving data (such as application code) from RSC 126. However, the cited portion of *Foster* fails to teach or suggest that RSC 126 notifies computer 100 that a software update is being requested. Merely reciting that data (or even application code) may be sent

between two computers does not disclose, without more, that the data is an indication that a software update is being requested, as Claim 1 recites.

Based on the foregoing, *Foster* fails to teach or suggest all the features of Claim 1. Therefore, Claim 1 is patentable over *Foster*. Removal of the 35 U.S.C. § 102(b) rejection with respect to Claim 1 is therefore respectfully requested.

#### B. CLAIMS 27 AND 53

Independent Claims 27 and 53 are either a computer-readable storage medium claim or an apparatus claim. Each of Claims 27 and 53 recite features discussed above that distinguish Claim 1 from *Foster*. Therefore, each of Claims 27 and 53 is allowable for the reasons given above with respect to Claim 1.

#### C. DEPENDENT CLAIMS

The dependent claims not discussed thus far are dependent claims, each of which depends (directly or indirectly) on one of the independent claims discussed above. Each of the dependent claims is therefore allowable for the reasons given above for the claim on which it depends. In addition, each of the dependent claims introduces one or more additional limitations that independently render it patentable. However, due to the fundamental differences already identified, to expedite the positive resolution of this case, a separate discussion of those limitations is not included at this time. The Applicant reserves the right to further point out the differences between the cited art and the novel features recited in the dependent claims.

#### III. CONCLUSIONS & MISCELLANEOUS

For the reasons set forth above, all of the pending claims are now in condition for allowance. The Examiner is respectfully requested to contact the undersigned by telephone relating to any issue that would advance examination of the present application.

A petition for extension of time, to the extent necessary to make this reply timely filed, is hereby made. If applicable, a law firm check for the petition for extension of time fee is enclosed herewith. If any applicable fee is missing or insufficient, throughout the pendency of this application, the Commissioner is hereby authorized to any applicable fees and to credit any overpayments to our Deposit Account No. 50-1302.

Respectfully submitted,

HICKMAN PALERMO TRUONG & BECKER LLP

Dated: July 11, 2007

/DanielDLedesma/  
Daniel D. Ledesma  
Reg. No. 57,181

2055 Gateway Place Suite 550  
San Jose, California 95110-1093  
Telephone No.: (408) 414-1229  
Facsimile No.: (408) 414-1076